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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,902	02/27/2004	Michael P. Spertus	5760-20100	9301

86942 7590 08/19/2009
Meyertons, Hood, Kivlin, Kowert, Goetzel/Symantec
P.O. Box 398
Austin, TX 78767-0398

EXAMINER

VERDI, KIMBLEANN C

ART UNIT	PAPER NUMBER
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2194

NOTIFICATION DATE	DELIVERY MODE
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08/19/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/789,902	Applicant(s) SPERTUS ET AL.	
	Examiner KimbleAnn Verdi	Art Unit 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-10,12-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-10,12-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1 – 3, 5 – 10, 12 – 15, and 17 – 19 are pending in the application.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/12/2009 has been entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1 – 3, 5 – 10, 12 – 15, and 17 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teegan et al (hereinafter Teegan, previously cited) (U.S. Patent 6,748, 555 B1) in view of Suresh (previously cited)(U.S. Patent**

7,143,396), and further in view of Niewiadomski et al. (hereinafter Niewiadomski, previously cited on PTO-892 dated 3/13/2009) (U.S. Patent 6,996,808 B1).

5. **As to claim 1**, Teegan teaches the invention substantially as claimed including a method for use in a distributed management framework comprising a plurality of applications, wherein each of the plurality of applications is configured to make function calls to standard programming functions, the method comprising:

using the agents to intercept the function calls to the standard programming functions made by each of the plurality of applications (Fig. 3, col. 10, lines 2-5, step 406, Fig. 6, col. 12, lines 38-39).

6. Teegan does not explicitly disclose inserting a respective agent into each of the plurality of applications upon a launch of each of the plurality of applications, wherein each of the standard programming functions comprises implementation program code which is located external to each of the plurality of applications calling the standard programming functions; routing the function calls to alternative implementations of the standard programming functions, wherein each of the alternative implementations of the standard programming functions is internal to a respective each of the plurality of applications calling the standard programming functions; and using the alternative implementations of the standard programming functions to collect availability metrics for each of the plurality of applications.

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7. However Suresh teaches inserting a respective agent into each of the plurality of applications (inserts a probe into an executing program; col. 4, lines 7 – 23) upon a launch of the application (code is inserted within program code statically and/or dynamically; col. 3, lines 12 – 20), routing the function calls to alternative implementations of the standard programming functions (operation 4, the original instruction is replaced with a pointer or instruction redirecting execution to the beginning of probe function 208a; col. 4, lines 7 – 23), and using the alternative implementations of the standard programming functions to collect availability metrics for the plurality of applications (a probe calls a corresponding probe function 108, which comprises a series of computer executable instructions for retrieving information from data module 106 if necessary, observing performance metrics; col. 3, lines 50 – 60).

8. Teegan as modified by Suresh does not explicitly disclose wherein each of the standard programming functions comprises implementation program code which is located external to each of the plurality of applications calling the standard programming functions; and wherein each of the alternative implementations of the standard programming functions is internal to a respective each of the plurality of applications calling the standard programming functions.

9. However Niewiadomski teaches wherein each of the standard programming functions (i.e. original function) comprises implementation program code which is located external to each of the plurality of applications (i.e. executable file) calling the

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standard programming functions (i.e. original function is in a dynamic link library, col. 2, lines 60-61, col. 7, lines 12-16, col. 12, lines 19-30); and wherein each of the alternative implementations of the standard programming functions (i.e. user-supplied function represented as stub_B(), col. 13, Table 4) is internal (i.e. runs within same process as executable file void main(), col. 13, table 4) to a respective each of the plurality of applications (i.e. executable file represented as void main(), col. 13, table 4) calling the standard programming functions (col. 12, lines 66-67 and col. 13, lines 1-20).

10. It would have been obvious to a person of ordinary skill in the art to modify the invention of Teegan to incorporate the features of Suresh and Niewiadomski. One of ordinary skill in the art would have been motivated to make the combination because this provides a system and method for measuring performance or resource usage of segments of a computer program in order to identify choke points or bottlenecks in the program, wherein later measurements may be fine-tuned based on earlier measurements (col. 1, lines 61 - 67 of Suresh) and enables logging of events for the purpose of statistical analysis or as data added to a software bug report (col. 2, lines 46-48 of Niewiadomski).

11. **As to claim 2**, Teegan teaches the method of claim 1, wherein the standard programming functions comprise memory functions (col. 15, lines 4-7).

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12. **As to claim 3**, Teegan teaches the method of claim 1, wherein the intercepting the function calls comprises intercepting the function calls in a production environment (col. 19, lines 24-26).

13. **As to claim 5**, Teegan teaches the method of claim 1, further comprising: modifying program code of at least one of the applications to enable the intercepting the function calls to the standard programming functions (col. 3, lines 19-23).

14. **As to claim 6**, Teegan teaches the method of claim 1, further comprising: using the availability metrics for performance management of the plurality of applications in the distributed management framework (col. 15, lines 49-67 and col. 16, lines 1-5).

15. **As to claim 7**, Teegan teaches the method of claim 1, further comprising: configuring the distributed management framework to monitor a subset of the plurality of applications (col. 11, lines 12-14, and col. 16, lines 6-9, col. 26).

16. **As to claim 8**, Teegan teaches the method of claim 1, further comprising: aggregating the availability metrics for the plurality of applications at a console for performance management (Fig. 11, col. 15, lines 50-55).

17. **As to claim 9**, this claim is rejected for the same reasons as claim 1; see the rejection to claim 1 above.

18. **As to claims 10 and 12**, these claims are rejected for the same reasons as claims 3 and 5, respectively; see the rejections to claims 3 and 5 above.

19. **As to claim 13**, this claim is rejected for the same reasons as claim 8; see the rejection to claim 8 above.

20. **As to claim 14**, this claim is rejected for the same reasons as claim 1; see the rejection to claim 1 above.

21. **As to claims 15 and 17**, these claims are rejected for the same reasons as claims 3 and 5, respectively; see the rejections to claims 3 and 5 above.

22. **As to claim 18**, this claim is rejected for the same reasons as claim 8; see the rejection to claim 8 above.

23. **As to claim 19**, this claim is rejected for the same reasons as claim 1; see the rejection to claim 1 above.

Response to Arguments

24. Applicant's arguments with respect to the claims 1-3, 5-10, 12-15, and 17-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

26. U.S. Patent 5,193,180 to Hastings, U.S. Patent 5,790,858 to Vogel, U.S. Patent 6,629,123 B1 to Hunt, U.S. Patent 7,506, 316 B2 to Vertes, U.S. Patent 7,512,935 B1 to Cobb, U.S. Patent 7,523, 191 B1 to Thomas et al., U.S. Patent 7,536,680 B2 to Berry et al., disclose monitoring applications for improving computer program performance.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KimbleAnn Verdi whose telephone number is (571)270-1654. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST..

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung, Sough can be reached on (571)272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hyung S. Sough/
Supervisory Patent Examiner, Art Unit 2194
08/17/09

KV
August 13, 2009